

1956

August 15

Mr. W. Russell Hilliard, Director
Aeronautics Commission
Concord Airport
Concord, New Hampshire

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CONCORD, N.H.

Dear Sir:

This will acknowledge receipt of your letter of August 1, 1956, concerning certain aspects of airport zoning under RSA 424, the "Model Airport Zoning Act".

We agree that the word "shall" in the third line of RSA 424:5, I, imposes a positive duty upon a town to adopt airport zoning regulations in a case in which the Aeronautics Commission has adopted an airport-approach plan according to which measures should be taken for the protection of airport approaches.

You refer to RSA 424:5, V, which authorizes certain action by the Commission if a town or city fail to adopt airport zoning regulations "within a reasonable time" after the establishment of an airport-approach plan, and you ask what may be considered a reasonable time. It is impossible to fix such period with certainty, and each case must be seen to turn upon its own facts and surrounding circumstances. Upon the establishment of an airport-approach plan, the municipality, as noted above, is under a duty to act. It ought to set about the performance of this act in a prudent, careful and businesslike manner, permitting on the one hand, no unnecessary delay, nor embarking, on the other hand, upon this important matter without careful deliberation. Any circumstances indicating urgency brought to the town's attention by the Commission are pertinent for consideration. Reference should be had, too, to the delays inherent in the statutory proceedings, as, for example, the fifteen days notice requirement of RSA 424:7, I. Allowance should be made as well for the time required to formulate the appropriate regulations.

You inquire next whether the regulations which the Commission is authorized to promulgate if the municipality fail to act within a reasonable time, RSA 424:5, V, supra, must be enacted in the same manner as those which the municipality itself should have enacted. We answer in the negative. No procedure is prescribed for the promulgation of the Commission's regulations, so they may be adopted in

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such reasonable manner as commends itself to the Commission; the prescribed procedure refers only to the regulations of the municipality itself.

Your final question refers to the manner of enforcing such regulations as the Commission may adopt. Such regulations should be administered under the direction of the Commission; and they should be enforced in the manner specifically provided in RSA 424:9.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW/T